

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-cv-329-GKF(SAJ)
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

STATE OF OKLAHOMA'S RESPONSE IN OPPOSITION TO "MOTION OF GEORGE R. STUBBLEFIELD ADAIR COUNTY REPRESENTATIVE OKLAHOMA SCENIC RIVERS COMMISSION STEVEN B. RANDALL DELAWARE COUNTY REPRESENTATIVE OKLAHOMA SCENIC RIVERS COMMISSION FOR PERMISSION TO FILE BRIEF AS AMICUS CURIAE IN OPPOSITION TO THE PLAINTIFFS' [sic] MOTION FOR PRELIMINARY INJUNCTION" [DKT #1589]

Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma and Oklahoma Secretary of the Environment C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma ("the State"), hereby submits this response in opposition to "Motion of George R. Stubblefield Adair County Representative Oklahoma Scenic Rivers Commission Steven B. Randall Delaware County Representative Oklahoma Scenic Rivers Commission for Permission to File Brief as Amicus Curiae in Opposition to the Plaintiffs' [sic] Motion for Preliminary Injunction" [DKT #1589] ("*Amicus* Motion"). Because the *Amicus* Motion is "not timely, useful or helpful to the Court beyond the help the lawyers for the parties are able to provide," the *Amicus* Motion must be denied.

I. The *Amicus* Motion must be denied because it is not timely, useful or helpful to the Court beyond the help the lawyers for the parties are able to provide.

A. Governing legal principles

The State incorporates by reference the governing legal principles it set out in its

Response in Opposition to the Motion of the National Chicken Council, U.S. Poultry & Egg Association, and the National Turkey Federation for Permission to File Brief as *Amici Curiae* in Opposition to the Plaintiff's Motion for Preliminary Injunction. *See* DKT #1568.

B. The *Amicus* Motion is untimely

The Preliminary Injunction Motion has been on file for more than three months now. The *Amicus* Motion should be denied as untimely because it has been filed after the preliminary injunction hearing has already begun. The movants offered no explanation for their delay in filing their *Amicus* Motion. To require the State to expend resources responding to an *amicus* brief as it litigates its Preliminary Injunction Motion is an unnecessary distraction, improper, and prejudicial.

C. The *Amicus* Motion is not useful or helpful to the Court beyond the help the lawyers for the parties are able to provide

The proposed *amicus* brief (improperly) incorporated in the *Amicus* Motion raises issues pertaining to (1) the amount of poultry waste being generated in the Illinois River Watershed, (2) whether the disposal of this poultry waste in the Illinois River Watershed is causing an imminent and substantial endangerment to human health, and (3) whether poultry waste is a solid waste under RCRA. These issues are already being addressed by the parties, and the movants offer no unique perspective on these issues. Indeed, a number of the movants' arguments mirror the flawed arguments being advanced by Defendants.

As this Court recently stated in *JPMorgan Chase Bank, N.A. v. Fletcher*, 2008 WL 73233, *1 (N.D. Okla. Jan. 7, 2008), "[a]micus briefs filed by allies of litigants which duplicate the arguments made in the litigants' briefs, in effect merely extending the length of the litigant's brief, are an abuse and should not be allowed. . . . The term 'amicus curiae' means friend of the court, not friend of a party." *Id.* at *1 (denying motion to file *amicus* brief because it would

otherwise "place the proposed amicus in the position of an additional counsel for the defendant rather than a friend of the Court"). This Court went on to deny the *amicus* motion in *JPMorgan Chase* because

it does not appear that the proposed amicus possesses unique information or perspective that can help the Court beyond the help that the lawyers for the parties are able to provide. [Defendant] is represented in this case by exceptional lawyers. Current counsel are fully capable of presenting the law and the facts to assist the Court in resolving the issues presented.

Id. at *2. So too, here. The movants' proposed *amicus* brief does not contain "unique information or perspective that can help the Court beyond the help that the lawyers for the parties are able to provide."

In short, for lack of utility, the movants must, therefore, be denied permission to file their proposed *amicus* brief. See *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 282 F. Supp. 2d 1271, 1274 (D.N.M. 2002) (denying leave to file *amicus* brief for lack of utility); *Long v. Coast Resorts, Inc.*, 49 F. Supp. 2d 1177, 1177-78 (D. Nev. 1999) (same).

II. Conclusion

For the foregoing reasons, movants' *Amicus* Motion [DKT #1589] should be denied.

Respectfully Submitted,

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